

PT 07-20

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

MICHAEL & SHERRI HARNOIS,
Applicants

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 06-PT-0055
(05-16-1851)
PINs 24-03-304-011
24-03-304-012
John E. White,
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Beth Allen, Elliott & Associates, appeared for Michael & Sherri Harnois; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue

Synopsis:

This matter arose after the Illinois Department of Revenue (Department) denied an application for a non-homestead property tax exemption for property that Michael and Sherri Harnois (Applicants or the Harnois) own, and which is situated in Cook County, Illinois. The issue is whether the property is exempt pursuant to § 15-40(a) of Illinois' Property Tax Code (PTC).

The hearing was held at the Department's offices in Chicago. Applicants presented documentary evidence consisting of books and records and other documents, and they each testified at hearing. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the exemption be denied.

Findings of Fact:

1. Applicants own property that is situated in Oak Lawn, Illinois. Department Ex. 1 (copy of Denial); Hearing Transcript (Tr.) p. 8 (testimony of Michael Harnois (Michael)).
2. At some point, Applicants signed a document, titled "Rental Lease Agreement," with Jesus Alive Outreach Ministries (Ministries). The whole agreement provides:

RENTAL LEASE AGREEMENT

RENTAL AGREEMENT ON PROPERTY ADDRESS AT
9113 SOUTH KENTON AVE, OAK LAWN. IL 60453.
TAX PIN # 24-03-304-11-0000, AND OR, 24--3-304--12-
0000.

THE AGREEMENT IS THAT THE OWNERS OF
PROPERTY (MIKE AND SHERRIE HARNOIS) LISTED
ABOVE 9113 SOUTH KENTON OAK LAWN, IL 60453,
IS BEING RENTED NO CHARGE TO JESUS ALIVE
OUTREACH MINISTRIES. FOR THE SOLE PURPOSE
OF NOT-FOR-PROFIT USE, COMMUNITY
OUTREACH CENTER, AND STORAGE OF SUCH
ITEMS. [sic] UPON CLOSURE OF JESUS ALIVE
OUTREACH MINISTRIES, OR TERMINATION ETC.
THEN THIS AGREEMENT IS NULL AND VOID.

[signatures]

Applicant Ex. 1 (copy of rental lease agreement).

3. On December 9, 2005, the Department issued a tax exemption identification number to Ministries in a letter which also provided: "We have received your recent letter, and based on the information you furnished, we believe JESUS ALIVE OUTREACH MINISTRIES of Oak Lawn, IL is organized and operated exclusively for religious purposes." Applicant Ex. 2 (copy of December 9, 2005

letter). After receiving that exemption identification number, Ministries could use it to purchase tangible personal property without paying Illinois use tax. 35 ILCS 105/3-65; 35 ILCS 120/1g.

4. The Harnois filed an application for a property tax exemption for the Oak Lawn property for 2005. *See* Department Ex. 1.
5. In January 2006, Sherrie Harnois signed an affidavit of use regarding the property. Applicant Ex. 4 (copy of Affidavit of use).
6. In June 2006, the Department denied Applicants' exemption request, after determining that the property was not in exempt ownership, and not in exempt use. Department Ex. 1.

Conclusions of Law:

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides, in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.
(a) Property used exclusively for:
 (1) religious purposes, or
 (2) school and religious purposes, or
 (3) orphanages
qualifies for exemption as long as it is not used with a view to profit.

35 ILCS 200/15-40.

Statutes granting tax exemptions must be construed strictly in favor of taxation, and the party claiming an exemption has the burden of proving clearly and conclusively that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547, 494 N.E.2d 485, 488 (1986); *see also* In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996) (clear and convincing evidence defined “as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.”).

Issues and Analysis

At hearing, the principle reason the Department relied on for denying the Harnois’ application for exemption is that the property is owned by two individuals, and not by an exclusively religious organization — or, in the parlance of the Department’s denial, the property was not in exempt ownership. Department Ex. 1. Applicants, however, argue that it does not matter that they own the property, since the section of the PTC under which they seek an exemption, § 15-40(a), does not require that the property be owned by a religious organization — only that it be used exclusively for religious purposes and not be used with a view to profit. Tr. pp. 21-22 (closing argument).

The Department responded to this argument by citing to Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919, 637 N.E.2d 463 (1st Dist. 1994) for the following proposition:

*** before one looks to the primary use to which the property is used after the leasing, one must look first to see if the owner of the real estate is entitled to exemption from

property taxes. If the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed.

Victory Christian Church, 264 Ill. App. 3d at 922, 637 N.E.2d at 465. Applicants respond that since the facts in Victory Christian are not similar to the facts here, the holding in that case should not apply here.

In the Victory Christian case, an individual leased property to a church which was then used as a church. The lease called for rent in the amount of approximately \$8,000 per month. The Victory Christian court agreed with the Department's argument that "While legal ownership is not a test for exemption, ... leasing a property for profit precludes exemption even when the lessee uses the property exclusively for religious purposes. ... [T]he property is not tax exempt because its owner is a private entity that collects rent and is profit motivated." Victory Christian Church, 264 Ill. App. 3d at 922, 637 N.E.2d at 465. In short, it was because the owner in that case was leasing the property with a view to profit that the Victory Christian court affirmed the Department's denial of an exemption for property that was admittedly being used for exempt purposes by the lessee. But the Victory Christian court also noted that the Illinois supreme court had previously held, in People ex rel. Bracher v. Salvation Army, 305 Ill. 545, 137 N.E. 430 (1922), that the statutory predecessor of the provision that is currently codified at § 15-40(a) did not require that the person using property exclusively for religious purposes also be the owner of the property. Victory Christian Church, 264 Ill. App. 3d at 922, 637 N.E.2d at 465 (*citing* Salvation Army, 305 Ill. at 548, 137 N.E. 430); *accord* American National Bank and Trust Co. v. Illinois Department of Revenue, 242 Ill. App. 3d 716,

723-24, 611 N.E.2d 32, 37 (2d Dist. 1983). Therefore, I cannot conclude that Applicants' ownership of the property requires that their application be denied.

But that does not mean that Applicants have borne their burden of proving, with clear and conclusive evidence, that the property was being used exclusively for religious purposes during 2005. And here, it must be recalled that property exemption cases are tax cases, and in tax cases it is documentary evidence — not mere testimony — that carries the day. *E.g.*, Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97, 421 N.E.2d 236, 239 (1st Dist. 1981) (uncontroverted testimony that was not corroborated with documentary evidence was insufficient to show that taxpayer was entitled to claimed exemption). Applicants offered some documentary evidence at hearing, but the sum of the evidence admitted is not sufficient to shoulder their burden here.

Applicants introduced a lease, signed by them as owners, and by Rosemary Sherwood, whose signature identifies her as the Ministries' secretary. Applicant Ex. 1. Applicants also offered into evidence the Department's December 5, 2005 letter notifying Ministries that the Department had determined that Ministries was an exclusively religious organization. Applicant Ex. 2. Even taken together with the testimony offered at hearing, however, these documents do not constitute clear and conclusive evidence that Ministries actually used the property exclusively for religious purposes during 2005.

Most fundamentally, the face of the lease itself does not identify when the lease term was to begin, or the date on which it was executed. Additionally, neither of the Applicants testified as to when the document was prepared, the date on which it was signed, or when the lease term was to commence. In other words, from this record, it is entirely possible that the lease term began after 2005. Given the total absence of

evidence on this point, Applicants have wholly failed to prove, by clear and conclusive evidence, that the property was, in fact, being used by an exclusively religious organization, for *any* purposes, during 2005.

Moreover, Applicants cannot rely on the Department's December 9, 2005 determination that the Ministries was an exclusively religious organization as proof of that entity's actual and exclusive religious use of the property. It is entirely possible for an exclusively religious organization, just like any other user of property, to use property for a non-exempt purpose. In fact, the only evidence of how Ministries actually used the property during the unknown period when the lease was in effect was offered through the testimony or statements of the owners. *See* Applicant Ex. 4.

Applicants' testimonies reflect a relationship between them and Ministries, but the precise nature of that relationship was left vague. For example, Michael testified that he was an ordained minister (Tr. p. 8), and the entity to which he and Sherrie rented the property is a religious ministry. Applicant Ex. 1. He testified that he assists the Ministry in its daily activities on the property and his testimony, to be competent, must be based on his personal knowledge of what those activities are. Tr. p. 9 (Michael). He did not, however, produce Ministries books and records to document the capacity in which he rendered such assistance to Ministries. Similarly, Sherrie testified that she was an officer of Ministries (Tr. p. 11), but she did not offer into evidence copies of Ministries' corporate books and records to identify which corporate office she testified that she held, or what activities Ministries actually conducted on the property during 2005.

At least under the Illinois Not-for-Profit Act, not-for-profit religious organizations must prepare and maintain books and records. 805 **ILCS** 105/107.75. The nature of

Ministries' use of the property during the time the lease was in effect — whatever that time period might be — would be most ably proved through the books and records of the organization to whom the owners claim to have leased the property, and not through the mere testimony of the lessors. This record lacks any evidence that Ministries even authorized Applicants to speak on its behalf.

Conclusion:

I conclude that the Harnois have not satisfied their burden to show that the property was actually being used exclusively for religious purposes in 2005. Therefore, I recommend that the Director finalize the Department's tentative denial of the Harnois' application for a property tax exemption, and that the property remain taxable for all of 2005.

Date: 6/6/2007

John E. White
Administrative Law Judge